IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SALES TAX REFERENCE No. 3 of 1998
With
SALES TAX REFERENCE No. 5 of 1998

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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THE STATE OF GUJARAT - Applicant(s)
Versus
GUJARAT STATE FERTILIZER CO.LTD. - Respondent(s)

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Appearance :
Mr Dipen Desai, ASSTT.GOVERNMENT PLEADER for Applicant(s) : 1,
MR TANVISH U BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR JUSTICE R. S. GARG
and
HONOURABLE MR JUSTICE D.H. WAGHELA

Date : 07/10/2006

ORAL (COMMON) JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. The Gujarat Sales Tax Tribunal at Ahmedabad has made these two References under section 69 of the

Gujarat Sales Tax Act on the following two questions for opinion of this Court which arise out of Second Appeals No.100 and 101 of 1984 which were finally disposed of by the Tribunal on 25.2.1987:

> *"(1) Whether on the facts and in the circumstances of the case, Gujarat Sales Tax Tribunal was right in law in setting aside the levy of purchase tax in respect of sundry stores materials worth Rs.5,48,154/- imposed on the basis of breach of recitals of declarations in Form No.19 in assessment for the year 1973-74 under the Gujarat Sales Tax Act, 1969 ?*
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> *(2) "Whether on the facts and in the circumstances of the case, Gujarat Sales Tax Tribunal was right in law in setting aside the levy of penalty under section 10(d) read with section 10A of the Central Sales Tax Act, 1956 in respect of the purchases of paints worth Rs.3,81,235/- purchases against declaration in Form-C by the opponent in assessment for the year 1973-74 under the Central Sales Tax Act, 1956?"*

2. The short facts leading to making of the References are that M/s. Gujarat State Fertilizers Co. Ltd., is engaged in the business of manufacturing chemical fertilizers and other chemicals, they are registered as a dealer under the Gujarat Sales Tax Act so also under the Central Sales Tax Act, 1956 (hereinafter referred to as “the State Act” and “the Central Act”). While assessing the dealer for the year 1973-74 under the Sales Tax Act, the learned Sales Tax Officer, Baroda held that the sundry stores materials worth Rs. 8,00,354/- against the certificates in Form No.19 were unauthorised and the purchaser i.e. the non-applicant was liable to pay purchase tax of Rs. 63,471/- under section 16 of the Central Act. These purchases were debited by the assessee to the stores account and used as consumable stores in the manufacture of taxable goods. The learned Sales Tax Officer held that these items were not directly used in the process of manufacture and further held the same to be unauthorized purchase against Form No.19. The assessee, being aggrieved

by the final order dated 27.3.1978 took up the matter in Appeal but the appeals came to be dismissed by the learned Assistant Commissioner, Sales Tax. The assessee being dissatisfied by the imposition of tax and disposal of his appeal, filed second appeal before the Tribunal. After hearing the parties so also recording the arguments in great details, the learned Tribunal observed that they were inclined to hold that the appellants before it had been successful in producing overwhelming evidence in support of their contention in respect of the facts and the same could also be buttressed by the supporting judgments of the Supreme Court of India and of the Tribunal. On this reasoning, the Tribunal allowed the appeals and set aside the imposition of the tax.

3. The department being dissatisfied by the judgments of the Tribunal, made applications for Reference to this Court. The applications were allowed and accordingly the References were made.

4. Shri Dipen Desai, learned counsel for the Revenue-applicant submits that in one of the matters, there were as many as 10 items which included Hand tools, Insulation materials, Welding materials, miscellaneous spares, spares of compressor, spares of pumps, electronic instruments, hardware materials, drawing materials, electrical materials, while in the other matter, applying of paint or coating of paint on the chimney of the Plant was involved. According to him, purchase of paint for coating the same on the chimney cannot be said to be a purchase for use by him, as raw or processing materials or as consumable stores in the manufacture of taxable goods. He submits that the 10 items referred to above also would not fall within the sweep of the articles which are required as raw material or processing material or as consumable stores in the manufacture of taxable goods used by him. After taking us through the orders passed by the Tribunal, he vehemently submitted that the learned Members of the Tribunal have simply referred to the arguments but did not record their independent reasonings and findings to upset the findings

recorded by the Sales Tax Officer which were approved and upheld by the Appellate Court. He also submits that in a given case, a particular item may be taken to be raw material or processing material or consumable stores, but in another case it may not be so. He also submits that the Tribunal and even the Officers of the Sales Tax Department would be required to apply their mind to the items which are purchased in Form No.19 in reference to that whether these are in fact raw material or processing material or are used as consumable stores in the manufacture of taxable goods. Last of his submission is that para 13 of the judgment of the Tribunal is the only discussion in relation to the arguments which were referred in the earlier part of judgment of the Tribunal.

5. Shri Dipen Desai submits that the judgments cannot be termed as legal judgments in the eye of law as they are devoid of reasons and lacking application of mind.

6. Mr Tanvish Bhatt, learned counsel for the assessee, non-applicant, on the other hand, submits that a perusal of the judgments would convince the Court that as the arguments submitted by the assessee were approved by the Tribunal, therefore, the argument should be taken to be the findings. He also submits that in the present case, the 10 items, in fact, are needed for maintaining production and in absence of such tools and other consumable materials, it may not be possible for the industry/assessee to go on with the production smoothly. He submits that the Assessing Officer should put himself in the chair of the assessee and then find whether the items in fact are raw material or consumable stores. Regarding application of paint on the chimney, it is submitted by him that the assessee being manufacturer of chemical fertilizers, is required to coat the chimney with proper paint to avoid corrosion of the Plant and Machinery as also damage to the chimney. He submits that application of paint ia an integral part of the process.

7. We have heard the parties at length and have

perused the provisions of law.

8. So far as section 13 (1)(B) of the Sales Tax Act is concerned, it reads as under:

> *"The recognized dealer certificates in the prescribed form, that the goods other than prohibited goods sold to him are goods purchased by him for use by him as raw or processing materials or as consumable stores in the manufacture of taxable goods for sale by him."*

9. The emphasis of section 13 (1)(B) is on the words "goods purchased by him" for use by him as raw materials or processing materials on one side, while the further emphasis on the other side is on the words, "as consumable stores" in the manufacture of taxable goods for sale by him. True it is, that the expression 'in the manufacture of taxable goods for sale by him' in section 13 (1)(B) of the State Act

would normally encompass the entire process carried on by the dealer in converting raw materials into finished goods, but it would equally be true that the whole process must be seen in which the goods are used as consumable stores. In a given case where the raw material is stored in plot 'A' and the Factory premises are located in plot 'B' and the goods are transported from plot 'A' to plot 'B' by use of a dumper, then it cannot be said that the dumper would be a consumable stores though it has to be accepted as a fact that without use of the dumper the raw material cannot be transported from one place to another. In our opinion, the words 'as consumable stores in the manufacture of taxable goods' must be read in reference to the context of the process of manufacture or production of the taxable articles. It is also true that an article which is directly related to the actual production of the goods and without which commercial production would not be inexpedient, must be regarded as goods intended for use “in the manufacture of taxable goods”, but that does not mean that every item which is used for the purpose of production without use of which commercial

production would still be possible, would become consumable articles.

10. The endeavour of the Assessing Officer or the Appellate Authority or the Tribunal should always be to see that whether in absence of such goods or without use of particular goods or consumable stores, would commercial production be inexpedient and, whether in absence of such items which are claimed as consumable stores, would it be possible for the manufacturer/producer to go on with the process of manufacture or production? As a general principle, it cannot be laid down that every item which is directly related to the actual production of goods and without which commercial production would be inexpedient, will have to be treated to be used as consumable stores in the manufacture of goods. Each item will have to be considered separately and in each case the process of manufacture will have to be taken into consideration. In a given case, inside coating of red oxide of iron storage tank may be considered to be expedient for commercial production

of a particular article but in a given case, the application of red oxide on outer body of such iron tank may not be considered to be expedient. In the present case, the Tribunal had simply observed that the arguments of the assessee were in accordance with law and the learned counsel for the Revenue could not meet it.

11. We would not go to the extent of saying that the Tribunal did not apply its mind to the facts of the case or the legal position of the case, but we would be entitled to say that the Tribunal did not discharge the legal duty cast upon it as second Appellate Court. In absence of legal findings on the issues or the arguments raised before a Court, the judgment cannot be allowed to stand.

12. Without entering into any controversy, we set aside both the judgments delivered by the Tribunal and remand the matters back to the Tribunal with a direction to redecide the matters in accordance with law after taking into consideration the observations made by us.

13. We must hold that the Tribunal was not right in law in setting aside the levy of purchase tax and levy of penalty under section 10(d) read with section 10A of the Central Sales Tax Act, 1956 in respect of the items referred to above in absence of legal findings on the issue.

14. The questions are answered in favour of the Revenue simply for purposes of setting aside the orders passed by the Tribunal. The matters are remanded back to the Tribunal for redecision in accordance with law after taking into consideration the observations made by us and after giving due opportunity of hearing to the parties. The Tribunal shall decide the matters afresh on their own merits in accordance with law without being influenced by the fact that its earlier judgments have been set aside by this Court.

sd/-
[R. S. Garg, J.]

sd/-
[D. H. Waghela, J.]

msp